

PETER C. ANDERSON

UNITED STATES TRUSTEE

Russell Clementson, Bar No. 143284

Attorney for the U.S. Trustee

UNITED STATES TRUSTEE

915 Wilshire Blvd., Suite 1850

Los Angeles, California 90017

Telephone: (213) 894-4505; Facsimile: (213) 894-0276

Email: russell.clementson@usdoj.gov

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SAN FERNANDO VALLEY DIVISION

In re

Louise Fulchiero,

Debtor(s).

) Case No. 1:17-bk-12876-VK

) Chapter 7

) **NOTICE OF MOTION AND MOTION TO**
) **AMEND ORDER DISMISSING CASE TO**
) **INCLUDE A ONE-YEAR BAR TO RE-**
) **FILING PURSUANT TO 11 U.S.C.**
) **§§ 109(g) AND 105(a); MEMORANDUM**
) **OF POINTS AND AUTHORITIES;**
) **DECLARATION OF JOYCE HONG IN**
) **SUPPORT THEREOF**

) Date: December 7, 2017

) Time: 1:00 p.m.

) Ctrm: 301

PLEASE TAKE NOTICE that on December 7, 2017 at 1:00 p.m., or as soon thereafter as the matter may be heard in Courtroom 301 of the above-entitled court, located at 21041 Burbank Boulevard, in Woodland Hills, California, the United States Trustee (the "U.S. Trustee") will request that this case be dismissed pursuant to 11 U.S.C. §§ 707(a) or 707(b)(3) with an two-year bar to refiling pursuant to 11 U.S.C. §§ 109(g) and 105(a).

1 This motion is based upon this Notice of Motion and motion, the attached Memorandum
2 of Points and Authorities and supporting Declaration, the pleadings and documents on file
3 herein, and such other evidence and argument as is presented at the time of the hearing.

4 Pursuant to Rule 4004(c)(1)(D) of the Federal Rules of Bankruptcy Procedure, the
5 discharge of the Debtor is stayed pending the outcome of this motion.

6 Any opposition, joinder, or other response to this Notice of Motion and motion must be
7 filed in writing, and served on the U.S. Trustee and other parties entitled to service, at least
8 fourteen (14) days before the date set for the hearing on this motion, as required by Local
9 Bankruptcy Rule 9013-1(f). Failure to timely file and serve any responsive papers may result in
10 the Court failing to consider the same.

11 DATED: November 14, 2017

OFFICE OF THE UNITED STATES TRUSTEE

12 By: /s/Russell Clementson

13 Russell Clementson

14 Attorney for United States Trustee
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. FACTS

The Debtor in this case, Louise Fulchiero (“the Debtor”), filed her voluntary Chapter 7 petition on October 26, 2017. Amy L. Goldman was appointed the Chapter 7 trustee.

Declaration of Joyce Hong (“Hong Dec.”), Ex. A.

The filing included only the petition and Mailing List. *Id.* Accordingly, on October 26, 2017, the Court served the Debtor with a Case Commencement Deficiency Notice (the “Deficiency Notice”) and an Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case (the “Compliance Order”), which notified the Debtor that if she fails to file her schedules, Summary of Schedules, Signed Declaration Concerning Debtor’s Schedules, Certification of Employment Income, Form 122A-1, Statement of Financial Affairs, or a motion requesting an extension of time to do so, within 14 days of the petition date then the Court would dismiss her case. Hong Dec. Ex. B. Fourteen days from the date of the petition was November 9, 2017. Hong Dec. Ex. A. The Debtor’s case was dismissed by an order entered on November 13, 2017 (the “November 13 Dismissal Order”). *Id.*

The Debtor has numerous prior incomplete filings or Chapter 13 cases that were dismissed for failure to make plan payments. Indeed, her history of filings, in reverse chronological order, is as follows:

Filed	Case No.	Disposition
10/26/2017	Chapter 7 1:17-bk-12876	Pending filed incomplete
07/25/2017	Chapter 13 1:17-bk-11977	Dismissed on 09/25/2017 – Failure to make plan payments
08/31/2016	Chapter 13 1:16- bk-12557	Dismissed on 09/30/2016 – Failure to File Information
09/08/2015	Chapter 13 1:15- bk-12982	Dismissed on 02/29/2016 – Voluntary dismissal

Thus, this is the fourth bankruptcy filed by the Debtor within the last three years.

II. DISCUSSION

1. Dismissal Under § 707(b)(3)

In enacting the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Congress made sweeping changes to the Bankruptcy Code to address abuses of the bankruptcy system. Section 707(b) in particular was modified to provide for dismissal of cases filed under chapter 7, either where a case is presumed abusive, which the U.S. Trustee is unable to determine in this case, or the evidence reflects that the case was filed in bad faith and/or where the totality of circumstances demonstrates that a discharge would be an abuse. Specifically, § 707(b)(3) provides that the court, in determining whether a case should be dismissed for abuse under this provision, “shall consider--- (A) whether the petition was filed in bad faith; or (B) the totality of the circumstances . . . demonstrates abuse.”

The Debtor’s numerous prior incomplete filings, which have resulted in dismissal of these cases for failure to prosecute and failure to comply in these cases with U.S.C. § 521(a), support a finding that the Debtor is utilizing the bankruptcy system to invoke the automatic stay without any intent to pursue this bankruptcy case in good faith.

Based on the foregoing, the U.S. Trustee requests that the Court make a finding that this case was filed in bad faith pursuant to § 707(b)(3).

2. The Debtor’s Bad Faith Justifies Dismissal With A Bar To Refiling Pursuant To §§ 109 And 105(a)

Section 109 defines who may be a debtor under the different chapters of the Bankruptcy Code. Pursuant to subsection (g),

no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if . . . the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case[.]

11 U.S.C. § 109(g). In addition, § 105(a) permits a bankruptcy court to enter any order necessary to carry out the provisions of the Code and to prevent an abuse of the bankruptcy process. 11 U.S.C. § 105(a).

1 The Debtor has not demonstrated any intent to seek bankruptcy protection for legitimate
2 purposes, and has failed to properly prosecute her case. Moreover, this is the fourth bankruptcy
3 filed by the Debtor within the last three years, which the Debtor has taken no steps to pursue
4 bankruptcy relief in good faith. Accordingly, the U.S. Trustee requests that the Court issue an
5 order prohibiting the Debtor from refiling for bankruptcy in any chapter, absent prior permission
6 of this Court, for a period of one year.

7 3. The Court Has Authority To Amend The Dismissal Order To Include A Bar.

8 Federal Rule of Bankruptcy Procedure 9023 allows the court to amend an order or
9 judgment. For the reasons set forth in the U.S. Trustee's motion to dismiss with a two-year bar,
10 good cause exists to amend the Court's November 13 Dismissal Order. The U.S. Trustee
11 requests that the Court's November 13 Dismissal Order be amended to include a one-year bar to
12 re-filing for bankruptcy in any chapter, absent prior permission of this Court, for a period of one
13 year.

14 **III. CONCLUSION**

15 For all of the forgoing reasons, the Court's November 13 Dismissal Order be amended to
16 include a one-year bar to re-filing for bankruptcy in any chapter, absent prior permission of this
17 Court, for a period of one year.

18 DATED: November 14, 2017

OFFICE OF THE UNITED STATES TRUSTEE

19 By: /s/Russell Clementson

20 Russell Clementson

21 Attorney for United States Trustee
22
23
24
25
26
27
28

DECLARATION OF JOYCE HONG

I, Joyce Hong, declare

1. I am a Paralegal Specialist with the Office of the United States Trustee, and am the Paralegal assigned to this bankruptcy case. I have personal knowledge of the facts set forth herein, and submit this declaration to put the following documents before the Court.

2. Attached hereto as Exhibit A is a true copy of the Court's electronic docket for *In re Louise Fulchiero* filed on October 26, 2017, assigned case number 1:17-bk-12876-VK which I printed from the electronic case files of the United States Bankruptcy Court for the Central District of California.

3. Attached hereto as Exhibit B is the Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case and Case Commencement Deficiency Notice served by the Court on October 26, 2017.

4. Attached hereto as Exhibit C is a true copy of the petition filed in this case on October 26, 2017, which I printed from the electronic case files of the United States Bankruptcy Court for the Central District of California.

5. To date, there is no indication on the electronic docket for this case that the Debtor has filed her schedules, Summary of Schedules, Signed Declaration Concerning Debtor's Schedules, Statistical Summary of Certain Liabilities, Certification of Employment Income, Form 122A-1, Statement of Financial Affairs, or was granted an extension of time. The Debtor's case was dismissed by an order entered on November 13, 2017.

6. Attached hereto as Exhibit D is a true copy of the Court's electronic docket for *In re Louise Fulchiero* filed on 07/25/2017, assigned case number 1:17-bk-11977 which I printed from the electronic case files of the United States Bankruptcy Court for the Central District of California.

7. Attached hereto as Exhibit E is a true copy of the Court's electronic docket for *In re Louise Fulchiero* filed on 08/31/2016, assigned case number 1:16-bk-12557 which I printed

1 from the electronic case files of the United States Bankruptcy Court for the Central District of
2 California.

3 8. Attached hereto as Exhibit F is a true copy of the Court's electronic docket for *In*
4 *re Louise Fulchiero* filed on 09/08/2015, assigned case number 1:15-bk-12982 which I printed
5 from the electronic case files of the United States Bankruptcy Court for the Central District of
6 California.

7 I declare under penalty of perjury that the foregoing facts are true and correct.
8 Executed on November 14, 2017, in Los Angeles, California.

9 /s/ Joyce Hong
10 Joyce Hong
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28